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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
800 Data Base Access Tariffs and the)	CC Docket No. 93-129
)	
800 Service Management System Tariff)	

APPLICATION FOR REVIEW

Pursuant to Section 1.115 of the Federal Communications Commission's ("Commission") Rules,¹ undersigned petitioners file this Application for Review of the January 31, 1994, Order of the Acting Chief of the Common Carrier Bureau (or "Bureau").² In this Order, petitioners were denied waiver of an earlier Bureau Investigation Order³ requiring them to place confidential information used to derive their 800 data base tariff prices on the public record. Petitioners were directed in the Order to file cost support for their 800 data base vertical feature services calculated without the use of proprietary cost models and vendor data which permit calculation of costs on an incremental "forward-looking" use basis.⁴ In the alternative,

¹47 CFR § 1.115.

²In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, Order, DA 94-99, rel. Jan. 31, 1994 ("Order").

³In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues For Investigation, 8 FCC Rcd. 5132 (1993) ("Investigation Order").

⁴Order ¶ 14.

petitioners were permitted in the Order to continue to use proprietary data to support their tariffs if they "release all relevant information to interested parties that signed protective agreements."⁵ Petitioners had all relied on proprietary, extremely confidential and competitively sensitive cost models and equipment vendor information in developing their 800 data base tariffs.⁶

The Bureau's Order directly countermands a prior order of the full Commission on precisely the same subject. The Bureau is limited by statute⁷ and rule⁸ to exercising only such delegated authority as the Commission has expressly delineated "by published rule or by order."⁹ No authority has been delegated to the Bureau to issue orders contrary to Commission directives -- indeed, such power has been expressly withheld from the Bureau.¹⁰ Such being the case, the issuance of a decree by the Bureau contrary to clear Commission precedent violates not only the Commission's Rules, but the Communications Act itself.¹¹

⁵Order ¶ 15.

⁶This Application for Review deals only with 800 data base "vertical features," the only part of 800 data base service for which new service cost justification was required.

⁷47 USC § 155(c)(1).

⁸47 CFR § 0.291.

⁹47 USC § 155(c)(1).

¹⁰47 CFR § 0.291(a)(2).

¹¹ITT World Communications, Inc. v. FCC, 699 F.2d 1219, 1248 (D.C. Cir. 1983).

In this case, the Commission had already established procedures to be followed when a carrier developed a tariff rate for a new service based on forward-looking costs. In the Open Network Architecture ("ONA") proceeding,¹² the Commission had set forth, following extensive reflection and industry consultation, specific guidelines, procedures and operational standards which govern when a dominant exchange carrier chooses, or is required by the nature of the data requested, to support its tariff on the basis of forward-looking costs. In the case of ONA tariffs filed by the Bell Operating Companies ("BOC"), the Commission was quite specific that "forward-looking costs" were the proper costs to support the prices for new services in a federal tariff.¹³ The Commission observed that "for the first time [it] is involved in the detailed oversight of exchange carrier ratemaking processes that disaggregate local switching functions into discrete services."¹⁴ The forward-looking costs developed by petitioners in the ONA proceeding, and for 800 data base vertical features in the instant proceeding as well, relied on two types of information which are extremely confidential:

- 1) proprietary computer models which can replicate the operation of highly sophisticated digital equipment which is shared between

¹²Petitioners' ONA tariffs relied on the same type of cost models and vendor data utilized in the instant proceeding.

¹³See In the Matter of Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, Order, FCC 93-532, rel. Dec. 15, 1993 ("ONA Tariff Order") ¶ 40.

¹⁴Id. ¶ 8.

services and is necessary to perform 800 service feature functions, thereby permitting assignment of costs among services; and 2) proprietary vendor switch data which permits the computer models to assign shared costs on a forward-looking basis.

Recognizing the extremely confidential and competitively sensitive nature of this information in the ONA tariff proceeding, the Commission "sought to strike a balance between the interests of switch vendors and Bellcore in protecting proprietary information and ratepayers' interests in participating effectively in the ONA tariff investigation."¹⁵ In striking such a balance, the Commission approved a detailed plan for limited access to the cost models and vendor information which had been devised by the Bureau and the industry.¹⁶ This approach to proprietary cost models, while extremely burdensome to the filing carriers (and, while less so for intervenors, nevertheless burdensome for them as well), was deemed adequate by the Commission to permit intervenors to participate meaningfully in the tariff review process.¹⁷ This procedure was also deemed sufficient by petitioners to protect the extremely sensitive information which they had relied on in producing their tariffs and acceptable to equipment vendors who provide the information to Bell Communications Research, Inc. ("Bellcore"), and U S WEST

¹⁵In the Matter of Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, Order, FCC 93-531, rel. Dec. 15, 1993, ¶ 3.

¹⁶Id. passim.

¹⁷See ONA Tariff Order ¶¶ 79-81.

pursuant to non-disclosure agreements. In short, the compromise accepted by the Commission, while not perfect, permitted carriers to prepare rates based on optimal costs while protecting highly sensitive information which could cause serious harm to competition, petitioners and equipment vendors if it fell into the wrong hands. The Commission's directives in this area also provided a measure of stability for future tariff filings.

In the 800 data base proceeding, petitioners utilized similar cost models and vendor proprietary information to develop costs for both 800 query service and 800 vertical features. The vertical features, classified as "new service" for price cap filing purposes, were based on forward-looking costs which could be accurately developed only through the use of vendor proprietary data -- and efficiently so only via computer costs models.¹⁸ As shown by affidavits, a reasonable alternative method to use of vendor data and the sophisticated computer cost models relied on by petitioners simply does not exist for 800 vertical features.¹⁹ The record shows that 800 data base service vertical feature costs reflect the costs of record storage and processing by the Service Control Point ("SCP") and

¹⁸The equipment vendors remain adamant that this information is so sensitive that a protective order of this Commission, carrying as it would only limited sanctioned authority, will not provide them with sufficient protection to permit them to continue to share their information with petitioners in the future. See letters from equipment vendors, Attachment A hereto.

¹⁹See Declarations of Julian L. Brice, Ruth Durbin, Hilmar F. Durden, Curt Hopfinger, James J. Lechtenberg, Francis J. Murphy, Robert E. Sigmon, Martin W. Clift and Kenneth A. Moreland, Attachment B hereto.

the cost of interconnecting the SCP and the Signal Transfer Point. The SCPs manufactured by different vendors have different performance characteristics and costs. Therefore, a detailed examination of the equipment, architecture, component costs and performance of each type of SCP is necessary to determine the "costs." The characteristics of each SCP are proprietary to the vendor of the SCP. Thus, the complex calculations required to determine the SCP costs per query require the use of sophisticated models such as the Common Channel Signalling Cost Information System ("CCSCIS"). The link costs per query are based on the equally proprietary capacities of the SCP.

Petitioners quite naturally proposed to follow the identical path ultimately approved by the Commission in the ONA proceeding for use of such models in preparing and defending their 800 data base tariffs as well.²⁰ Yet the Bureau in the Order simply

²⁰At the Bureau level, the BOCs offered an alternative proposal put forth in their Petition for Waiver filed herein Sep. 16, 1993, at 10-11, which provided: 1) Bellcore assistance to the Bureau in its evaluation of the reasonableness of the model; 2) equipment vendor certification that the price, capacity and discount information provided to Bellcore was accurately reflected in the models used by the BOCs; and 3) intervenor access to redacted documentation upon execution of an appropriate non-disclosure agreement. This alternative was almost identical to what they proposed in the ONA proceeding and was accepted by the Bureau.

Bellcore and U S WEST are now willing to provide their CCSCIS documentation, including its intellectual property, to intervenors who execute appropriate non-disclosure agreements with reasonable terms and conditions. Vendor information used, however, will not be accessible. However, the combination of access to the documentation in virtually unredacted form and access to vendor certification will result in full disclosure to those who are parties to the proceeding.

disregarded the Commission's earlier decision and ruled that petitioners must disclose "all relevant information to interested parties that signed protective agreements"²¹ or use different methods of calculating costs.²²

The Bureau's justification, such as it is, for differentiating among the 800 data base proceeding and the ONA tariff proceeding, is threefold:

1. 800 vertical features are similar to each other in nature (while ONA services are different).²³ This difference has no relevance to the basic fact that forward-looking costs cannot be realistically developed without use of proprietary vendor information and, as noted previously, vertical features can only be differentiated from basic features, and from each other, on the basis of SCP costs per query.
2. Accuracy in cost development is less important in the case of 800 vertical features than it was in the case of ONA services, and "the public interest would suffer more by failing to make public disclosure of the cost support for both basic 800 database services and vertical features than it would gain by having a more precise calculation of costs for vertical features."²⁴ In taking this position, the

²¹Order ¶ 15.

²²Id. ¶ 14.

²³Id.

²⁴Id.

Bureau argues that the less important the tariff filing the more willing the Commission is to risk either inaccurate cost support or disclosure of secret information in the name of vital public review,²⁵ a position which simply makes no sense. If public review of tariff support material is really important, especially in today's competitive market,²⁶ something which we would vigorously dispute, such public review could be more important, not less important, in the case of more consequential tariffs.

3. The distinctions which the Order attempts to draw between the ONA tariff proceeding and the instant proceeding are specious. The procedure in the ONA proceeding allowed, as the Commission found, meaningful intervenor participation while protecting confidential information. The idea that these findings are diminished in any way in the case of 800 vertical features is not supportable. The stated position of the Bureau, that the cost accuracy and protection of confidential information somehow coexist on a sliding scale with public review of tariff support depending on the importance of the tariff, can find no life in logic, reality or any part of the Commission's precedent.

²⁵Id. ¶ 12.

²⁶At least one of the parties clamoring most vocally for the secret information, MCI, has announced full scale entry into the local exchange business in competition with petitioners.

The bottom line is that the Commission's precedent established in the ONA proceeding is binding on the Bureau. It is also a sensible and realistic position. The Commission should, accordingly, reverse the Bureau's Order, grant the waivers requested by petitioners, and permit them to proceed with their tariff filings in a way which permits the maximum accuracy and still protects the confidential information of petitioners and affected equipment vendors. The Order denies this opportunity.

Respectfully submitted,

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Its Attorney

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Its Attorney

March 2, 1994

ATTACHMENT A



100 - 2 150

1850 M Street, N.W. 11th Floor
Washington, D.C. 20036
Telephone: (202) 828-7452

Richard D. Lawson
Director
Federal Regulatory Relations
United Telephone Companies

July 29, 1993

Mr. Gregory J. Vogt
Chief, Tariff Division
Federal Communications Commission
1919 M. Street, Room 518
Washington, DC 20554

Dear Mr. Vogt,

Representatives of Bellcore asked the United Telephone companies (United) to send you this letter regarding United's use of a model to determine the capital costs included in United's rates for 800 data base vertical features.

I consulted with the United costing and rate development experts that prepared United's 800 data base tariff filing. They inform me that United did not include any capital costs in the rates for vertical features. Accordingly, United did not use Bellcore's CC SCIS costing model or any equivalent costing model to calculate the capital costs of 800 data base vertical features.

However, United's experts also inform me that had United chosen to include capital costs, the same could not have been precisely determined without the use of a proprietary model or process containing vendor proprietary information or commercially sensitive information.

If you have questions about this matter, please contact me at the telephone number or address shown above.

Sincerely,

Richard D. Lawson

cc: Jay C. Keithley
Vice President - Law and External Affairs
Sprint/United Telephone
Craig Smith
Senior Attorney
Sprint/United Telephone
Stuart Drake



Western Electric® products
2600 Warrenville Road
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708 224-4000

August 23, 1993

James F. Britt
Executive Director
290 W. Mt. Pleasant Ave.
LCC 2E-243
Livingston, NJ 07039

RE: 800 Data Base Designation Order - Cost Model Disclosure
Requirements

Based upon discussions with the FCC staff in the referenced matter, you recently asked AT&T-NS to consider two proposed options intended to address the review of Bellcore cost models (e.g. CCSCIS and/or SCIS). Our comments are summarized as follows:

1. Provide intervenor access, under very rigid and controlled processes and nondisclosures.

Bellcore cost models contain AT&T-NS information that is highly proprietary and competitively sensitive. Although nondisclosure agreements offer some protection, that level of protection is not sufficient, in the view of AT&T's Law Department, in these circumstances. Whether a nondisclosure agreement's protection is adequate in each situation is a function of balancing the nature of the proprietary information involved and the harm which will occur upon disclosure against the protections offered by the nondisclosure agreement. The degree of competitive harm is such that even the smallest risk that the nondisclosure agreement might be violated is sufficient in this instance to lead AT&T-NS to the conclusion that this recommended approach is not acceptable. Further, AT&T-NS does not believe that it would possess an adequate remedy at law to compensate AT&T-NS for the potential losses which might occur if an individual were to violate the nondisclosure agreement.

2. Provide some type of vendor certification to the commission stating that vendor input information is used within the Bellcore cost model(s) without modification or misrepresentation.

2.

At this point, AT&T-NS understands that some type of vendor certification may be an appropriate activity for this regulatory situation. In concept, we are supportive. We do, however, reserve our final, more definitive response to some later date when the process details have been established.

In general, AT&T-NS is interested in cooperating with Bellcore, the operating companies, and the FCC as much as possible. In doing so, two objectives are foremost: 1) protection of our proprietary information; and 2) maintaining minimum expense levels. Should all possible alternatives be unacceptable to the FCC, and the order to disclose Bellcore cost model information is implemented, AT&T-NS will regretfully and immediately cease to provide all product, price, and feature information to Bellcore for cost model development.

We are available to explore the possibilities of a vendor certification process if appropriate. Please contact me on 708-224-4178 when further assistance is needed.



M. R. Bruening
AT&T-NS
Service Cost, Tariff, and
Regulatory Consultant

Copy to:
D. Pines

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908.562.4000

AUG 17 1993

digital

August 16, 1993

Mr. James Britt
Bell Communications Research
290 W. Mount Pleasant Ave.
Rm.: LCC 2E243
Livingston, N.J. 07039

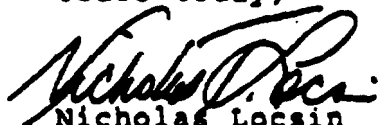
Dear Mr. Britt:

Thank you for your call regarding the options available to Digital regarding the release of information provided by Digital to Bellcore for use in Bellcore price models.

We understand that certain intervening parties would like to obtain access to elements of information contained in the Bellcore model. With respect to the pricing information provided by Digital, we would agree to review its accuracy as contained within your pricing model and provide a statement attesting thereto.

Digital List Pricing is open and available to customers. However, individual company discounts and allowances we consider to be confidential.

Yours truly,


Nicholas Locsin
Account Executive
Telecommunications

NL/pp

AUG 26 1993

**DSC Communications
Corporation**

WILLIAM R. TEMPEST
Vice President,
Secretary and
General Counsel
August 24, 1993

FAXED
8-24

Mr. James Britt
Executive Director
Bell Communications Research, Inc.
290 West Mt. Pleasant Avenue
Livingston, NJ 07039

Dear Mr. Britt:

The purpose of this letter is to confirm our recent telephone conversation regarding certain matters pending before the Federal Communications Commission ("FCC").

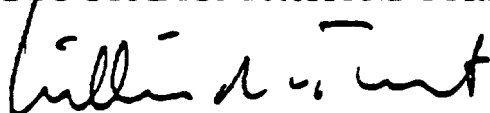
You have advised me that the FCC has requested those local exchange carriers ("LEC's") which rely on cost models to file those models on the public record. At least some of those models were trade secrets or contained trade secrets or proprietary information.

Bell Communications Research, Inc. ("Bellcore") has delivered to the FCC affidavits from, among others, all of the Regional Bell Operating companies, Southern New England Telephone, GTE and Cincinnati Bell indicating that the cost models included proprietary information of vendors, including, in some instances, DSC Communications Corporation.

I understand the FCC has proposed two alternatives. Under one alternative, a vendor such as DSC would allow a certain number of interveners (AT&T, Sprint, MCI, etc.) to look at the capacity of our product, and review costs and prices, among other things. Access to this information would be limited, would be filed under seal and it is possible that there could be civil penalties for misuse or unauthorized disclosure of the information. We find this alternative unacceptable. Regardless of the safeguards imposed, at least one of our major competitors would have access to highly sensitive information concerning our products.

A second alternative would be for us to certify the information contained in the models is what was provided to Bellcore and others by our Company. This would require consultation between us and the affected LEC's to confirm that the information contained in their respective pricing models accurately reflects information provided by DSC. As between the two proposed alternatives, we find the second alternative less unpalatable.

Very truly yours,
DSC COMMUNICATIONS CORPORATION

A handwritten signature in dark ink, appearing to read "William R. Tempest". The signature is fluid and cursive, with a prominent "W" and "T".

William R. Tempest
Vice President, Secretary
& General Counsel

cc: Mo Shabana



AUG 19 1993

Northern Telecom Inc.
P.O. Box 13010
Research Triangle Park
North Carolina 27709-3010

(919) 992-5000
TWX 510-927-1801
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August 13, 1993

James F. Britt, Executive Director
Bell Communications Research, Inc.
Room LCC-2E-243
290 W. Mt. Pleasant Avenue
Livingston, New Jersey 07039

RE: FCC 800 Database Designation Order
(CC Docket No. 93-129)

Dear Jim:

This letter is to confirm our recent conversation regarding possible vendor response options to the above-referenced FCC Designation Order pertaining to 800 Database Access Tariffs which was adopted and released by the FCC's Common Carrier Bureau on July 19, 1993.

Our objective at Northern Telecom Inc. is to cooperate as fully as possible with Bellcore and the FCC in connection with the Designation Order, consistent with the appropriate protection of Northern Telecom Inc.'s confidential information including technical and other strategically sensitive data.

You indicated during our conversation that the FCC and Bellcore desire to avoid following the same expensive and time-consuming process with respect to the Designation Order that was followed in connection with the FCC's ONA proceeding in order to protect the switch vendors' confidential information. In that regard, you also indicated to me that two alternative processes for protection of the switch vendors' confidential information are under consideration in order to address the FCC's requirements as well as the concerns of the switch vendors, such as NTI, for the protection of their confidential information.

As I understand these alternative processes, one process would involve some form of certification or confirmation to be provided by

each switch vendor to the FCC concerning the accuracy and/or completeness of that switch vendor's switch data that has been furnished to Bellcore for use by Bellcore in populating Bellcore's CC SCIS model. The other process, as I understand it, would require the agreement of the switch vendors to allow Bellcore to disclose fully the CC SCIS model and its contents, including the switch vendors' confidential information, to intervenors in the Designation Order proceeding, subject to a Nondisclosure Agreement.

In our view, the latter alternative involving full disclosure of the CC SCIS model does not appear to be appropriate for protection of NTI's confidential information. The information provided by Northern Telecom to Bellcore in connection with the CC SCIS model is similar to that provided by NTI to Bellcore with respect to Bellcore's SCIS model which was the subject of the FCC's ONA proceeding. In that regard, our position concerning the possible disclosure of Northern Telecom's information to intervenors in this proceeding, even under a Nondisclosure Agreement, would be similar to the position we took in the FCC's ONA proceeding. We would object to such disclosure. Northern Telecom would not object, however, to protections in this proceeding which were no less protective of Northern Telecom's confidential information than the protections which applied to Northern Telecom's information pursuant to the FCC's ONA proceeding.

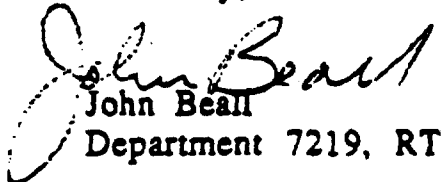
On the other hand, we believe that it is possible that the other alternative process which would involve some type of certification or confirmation by NTI and the other switch vendors with respect to the accuracy and/or completeness of their switch data that was used by Bellcore to populate the CC SCIS model may be appropriate. Before Northern Telecom could take a definitive position on this alternative we would need to understand better the details concerning the processes and requirements that would apply to the alternative. For example, since Northern Telecom has had limited access to the CC SCIS model, it would not appear to be appropriate for Northern Telecom to certify or confirm that Northern Telecom's information has, in fact, been appropriately inputted into the CC SCIS model.

In conclusion, we believe the certification/confirmation process identified above is likely to be the more appropriate of the two alternatives for the protection of Northern Telecom's and the other switch vendor's confidential information. We are willing to consider

Page 3

that alternative further upon receipt of a more detailed description of that alternative. We would be pleased to work with you and/or the FCC to attempt to provide our insights with respect to the further definition of that alternative, if you believe that would be helpful.

Sincerely,


John Beall
Department 7219, RTP

st6192a/fs

cc: Paul DeJongh
Mike Bass

ATTACHMENT B

United States of America
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
800 Data Base Access Tariffs and the)	CC Docket No. 93-129
800 Service Management System Tariff)	
)	

Declaration of Julian L. Brice

1. I am Manager-Cost Operations for Ameritech. Ameritech is a local exchange carrier ("LEC") and a participant in the above-captioned proceeding. I provide this declaration to address statements contained in Common Carrier Bureau's Order Designating Issues for Investigation dated July 19, 1993 ("the July 19 Order"). I am personally familiar with the facts related here, and am competent to testify regarding them if called upon to do so.

2. The Common Channel Signalling Cost Information System ("CCSCIS") is a computer model used by Ameritech, a CCSCIS licensee, to calculate and apportion the shared SS7 investments used by 800 data base and other SS7 based services. A key feature of CCSCIS is its incorporation of current cost data from five equipment vendors (Northern Telecom, DSC Communications, Digital Equipment Corporation, Ericsson and AT&T). This enables Ameritech and other users of CCSCIS to develop accurate and up-to-date service specific investments for purposes of this and other proceedings. The vendor data is proprietary and the CCSCIS model is both a trade secret and proprietary, according to Bell Communications Research, Inc. ("Bellcore"), the owner of CCSCIS.

3. Footnote 24 of the July 19 Order states that "since, in the present proceeding, two LECs were able to develop costs for 800 data base service without [CCSCIS or similar model], LECs do not need to rely on such a model for

this service." That statement is not valid with respect to Ameritech. Ameritech has relied upon CCSCIS to develop investments for the 800 data base service. I am not aware of any other models for developing those investments that would enable Ameritech to readily develop reasonable costs for 800 data base vertical services for this proceeding and that would not also involve applications of proprietary data and models.

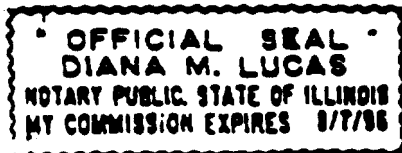
4. Paragraph 29 of the July 19 Order directs any LEC that relies upon CCSCIS or a similar model in this proceeding "to disclose those models on the record." Bellcore imposes limits on the use of CCSCIS by Ameritech and has established severe restrictions on the disclosure of information contained in or pertaining to the CCSCIS model. Ameritech has complied with those restrictions. Ameritech cannot comply with those restrictions and also "disclose" CCSCIS "on the record."

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 1993.

Julian L. Brice
Julian L. Brice

Subscribed and affirmed before me this 28 day of July, 1993.



Diana M. Lucas

In the Matter of)
) CC Docket No. 93-129
800 Data Base Access Tariffs and the)
800 Service Management System Tariff)

1. I am Assistant Manager - Access Filings at Bell Atlantic Network Services Inc. and was responsible for preparing the rate justification in connection with the Bell Atlantic telephone companies' 800 data base access tariff.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Ruth J. Durbin
Ruth Durbin

United States of America
Federal Communications Commission

In the Matter of)
)
800 Data Base Access Tariffs and the) CC Docket No. 93-129
800 Service Management System Tariff)

Declaration of Hilmar F. Durden

1. I am Hilmar F. Durden, Manager, Economic Analysis for BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth is a local exchange carrier ("LEC") and a participant in the above-captioned proceeding. I provide this declaration to address statements contained in the Common Carrier Bureau's Order Designating Issues for Investigation dated July 19, 1993 ("the July 19 Order"). I am personally familiar with the facts related here, and am competent to testify regarding them if called upon to do so.

2. The Common Channel Signalling Cost Information System ("CCSCIS") is a computer model used by BellSouth, a CCSCIS licensee, to calculate and apportion the shared SS7 investments used by 800 data base and other SS7 based services. A key feature of CCSCIS is its incorporation of current cost data from five equipment vendors (Northern Telecom, DSC Communications, Digital Equipment Corporation, Ericsson and AT&T). This enables BellSouth and other users of CCSCIS to develop accurate and up-to-date service specific investments for purposes of this and other proceedings. The vendor data is proprietary and the CCSCIS